IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITION
WRIT PETITION (ST) NO. 9004 OF 2009

Airports Authority of India ..... Petitioner

V/s

The President, Airports Kamgar Union and Ors. ..... Respondents.

Mr. C.U. Singh Senior Counsel with Mr. Girish Kulkarni with Mr. M. Shetty i/b M.V. Kini & Co. for the petitioners.

Ms. Gayatri Singh with Ms. Bhavana Mhatre for respondent No.2.

Mr. Anand Grover with Ms. Jane Cox for respondent No.3

Mr. R.A. Rodrgiues i/b Mr. Sagar Talekar for the Airport Authority Employees Union.

ALOGNWITH
WRIT PETITION NO.3835 of 2009

Mumbai International Airport Private Limited ...Petitioner

V/.s

Indian Airport Kamgar Union and Ors. ...Respondents.

Mr. Rafiq Dada, Senior Counsel with Mr. Birendra Saraf & Mr.Mitra Das and Mr. Bhavik Manek i/b M/s Wadia Ghandy & Co. for the Petitioner.

Ms Gayatri Singh with Ms. Bhavana Mhatre for respondent No.1.
Mr. Jai Prakash Sawant for respondent No.2

Mr. Anand Grover with Ms. Jane Cox for respondent No.3

Mr. R.A. Rodrigues i/b Mr. Sagar Talekar for the Airport Authority Employees Union.

CORAM : V.M. KANADE, J.
DATE : 13th April, 2009

P.C:-

1. Heard the learned Counsel appearing on behalf of the petitioners and the learned Counsel appearing on behalf of the Respondents. By consent of the parties, both these Petitions are heard finally at the stage of admission.

2. Petitioner in Writ Petition (St.) No. 9004 of 2009 is Airports Authority of India and the Petitioner in Writ Petition No.3835 of 2009 is the Mumbai International Airport Private Limited (hereinafter referred to for the sake of brevity as “AAI” and “MIAL” respectively). Both these Petitioners are challenging the order passed by the Central Government Industrial Tribunal dated 24/03/2009 in Reference No.CGIT-2/23 of 2008 and more particularly below Exhibit 9 and 13 being the interim applications which are taken out by the respondents herein during the pendency of the reference, seeking interim orders as more particularly stated in the said

applications.

3. Brief facts in a nutshell are as under:-

4. The AAI is a statutory Corporation and the MIAL is a Private Limited Company in which the AAI has 26% share holding. The Union of India amended The Airports Authority of India Act, 1994 and incorporated section 12A, permitting AAI to enter into lease agreement with Private Companies for the purpose of maintenance of the Airports. The AAI took a decision to enter into lease agreement with MIAL for a period of 30 years and thereby a decision was taken to hand over certain areas of management of the Airport at Mumbai to MIAL. One of the clauses in the said agreement pertaining to operation of the Airport and more particularly clause 16.1 and 16.1.4 specifically stated that an option would be given to the employees of AAI and, in this case, those employees fall under the categories “C” and “D” to opt for working with MIAL on terms and conditions of service which were not less beneficial than that of AAI. The said clause also stated that , upon refusal to opt to join MIAL, the employees of AAI would

continue to work as its employees and there would not be any change in the conditions of service of such employees. It is also stated that such employees would not be retrenched. In the said agreement, a period of three years was given to AAI to cooperate with MIAL for the purpose of transferring the management from AAI to MIAL and during this period it was agreed that the employees of AAI would continue to work with MIAL and, in return, MIAL would give operating cost per year to AAI. It was further agreed in the said agreement that the said period of three years would be over on 03/05/2009.

5. Pursuant to the said clause in the agreement, the AAI asked its employees to give their option of joining MIAL. However, only 161 employees showed their inclination to join MIAL and others have opted, staying with AAI. It is an admitted position that there are about 2112 employees, out of which 161 have opted to join MIAL and about 600 employees have given their option for the purpose of transfer to Airports in the Western Sector and orders to that effect have already been issued. The MIAL in its affidavit has

stated that they have already employed about 799 employees including 161 employees which were absorbed in MIAL.

6. The respondent – Union asked the Government to refer the dispute and an application was made in 2006 and reference was made in 2007. Application for interim relief was filed on 21/10/2008. In the interim application various reliefs were sought by the Union. The Industrial Tribunal, however, did not grant other reliefs which were sought by the employees. However, the Industrial Tribunal passed an order of injunction, restraining MIAL in making adverse alterations in conditions of service of the employees without following due process of law and further prevented the AAI from transferring its employees from Mumbai Airport to other Airports and further directed the AAI to provide work to the existing employees. Being aggrieved by the aforesaid order of injunction, AAI and MIAL have filed these two petitions.

7. Mr. C.U. Singh, the learned Senior Counsel appearing on behalf of the Petitioner – AAI in Writ Petition (St.) No.9004 of

2009 submitted that, firstly, there was no occasion to issue notice under section 9A of the Industrial Disputes Act since the condition of service of the employees of AAI had not been altered to the employees prejudice. It is further submitted that the statement on oath has been made by the AAI, stating therein that services of the employees of AAI who have not opted to join MIAL would not be retrenched. It is, therefore, submitted that there was no occasion for the Industrial Tribunal to grant an order of injunction, restraining the AAI from transferring its employees to other Airports under Western Sector. It is submitted that in an individual agreement between the AAI and its employees, transfer is one of the conditions which was specifically accepted by the employees and even, under Regulation 7A, the AAI was authorized to transfer its employees. It is, therefore, submitted that the order restraining the AAI from transferring its employees was not warranted and that there would be chaos on the Airport since on 03/05/2009, operation of the Airport was to be handed over to MIAL.

8. Mr. Dada, the learned Senior Counsel appearing on

behalf of the petitioner – MIAL in Writ Petition No.3835 of 2009 submitted that they had already taken steps for the purpose of appointment of employees and in all about 799 employees have been appointed. It is submitted that the Industrial Tribunal had misconstrued the provisions of OMDA which was an agreement between the AAI and the MIAL and the Industrial Tribunal had proceeded on the footing that all the employees of AAI would become employees of MIAL. He submitted that in view of clause 6.1.4, it is apparent that the services of the employees of AAI would not be controlled in any manner by MIAL and the said clause specifically made it clear that an option was given to AAI employees, either to join MIAL or to continue to work with AAI. It is submitted that the learned Industrial Tribunal, initially, had granted identical interim relief and, thereafter, the matter was remanded for further reconsideration of the interim orders after the affidavit in reply was filed by AAI and, thereafter, the same order has been passed by the learned Industrial Tribunal, which clearly showed non-application of mind on the par tof the Tribunal.

9. Mr. Grover, the learned Counsel appearing on behalf of respondent No. 3 – Union submitted firstly that the change which was sought to be made by AAI would squarely fall under Item Nos. 10 and 11 of the 4th "Schedule of the Industrial Disputes Act, 1947 and, therefore, there was a clear case of non-issuance of notice as contemplated under section 9A and, therefore, the Tribunal had rightly protected the interest of workmen by directing AAI not to transfer its employees and give work to them at the said Airport. He submitted that as a result of the agreement which was executed between AAI and MIAL, the direct consequence of the said agreement had resulted in conditions of service of employees of AAI being directly affected. He submitted that though a submission was sought to be made by AAI that the services of the employees of AAI would not be retrenched, the ultimate consequence of the fact situation as it exists now and the consequences which would follow, is that these these employees would be rendered surplus and, thereafter, they would be retrenched. He invited my attention to the minutes of the meeting of the AAI in which a fear was expressed by the Committee which was constituted for the

purpose of evaluation of the consequences of 60% of employees of AAI not joining MIAL and a serious concern was was expressed that these employees would be rendered surplus. Therefore, Mr. Grover, the learned Counsel submitted that the said apprehension was genuine and was also shared by the management of AAI. He, therefore, submitted that the said apprehension was not illusory and confirmed by the apprehension of the respondent – Union. He invited my attention to the judgment of the Supreme Court in the case of Shankarprasad vs Lokmat Newspapers Pvt. Ltd., Nagpur reported in **1997.11.LLJ 209** and also invited my attention to para 25 of the said judgment. He also relied upon other judgments of this Court and the Apex Court on this point.

10. Mr. Grover, the learned Counsel for the respondent – Union then submitted that the OMDA agreement clearly amounted to improvement of plant or technique was likely to lead to retrenchment of workmen. He submitted that as a result of the said agreement, there was a possibility of reduction in number of persons who were employed by the

AAI and, therefore, the AAI ought to have issued notice under section 9A. It is submitted that the Union was never taken into confidence before the AAI entered into agreement with MIAL. It is submitted that, therefore subsequent discussion with the Union amounted to post-decisional hearing which is clearly violative of Article 14. He relied upon the judgment of the Apex Court in the case of H.L. Trehan and Others vs Union of India and Others, reported in **1989 SCC (L & S) 246** as also other judgments of the Apex Court.

11. Ms. Gayatri Singh appearing on behalf of respondent Nos. 1 and 2 invited my attention to the various documents which were filed before the Tribunal and submitted that as a result of the said agreement, the service conditions of AAI were directly affected. She submitted that, in the past since more than six years, the employees of AAI were never transferred. She submitted that, in this case, almost the entire airport staff belonging to Categories “C” and “D” was forced to go to other Airport merely because they did not accept the option which was given by AAI. She submitted that, initially, an employee could be transferred only to five

Metropolitan Cities. However, by relying on OMDA agreement, AAI was seeking to transfer all its employees and, therefore, it could not be said that the said transfer was on account of administrative exigencies. She vehemently opposed the submissions made by Mr. C.U. Singh, the learned Senior Counsel appearing on behalf of the Petitioner – AAI that the transfer is one of the conditions of service. She submitted that there is ample material on record to indicate that the transfer was not one of the conditions of service and only in few individual cases AAI could exercise its right to transfer but that too only within five Metropolitan Cities. It is submitted that after an amalgamation of two Wings of domestic and international departments, there was no formal policy framed by the AAI for the purpose of adjusting seniority and other conditions of service of its employees and, therefore, without first laying down the guidelines or policy on that aspect, the AAI did not have right to transfer its employees. She further submitted that no prejudice would be caused to AAI if these employees are permitted to work at Mumbai Airport during the pendency of the reference since during the last three years support

period these employees had worked alongwith and under the supervision of MIAL. She also adopted the submissions made by the learned Counsel appearing on behalf of responent No.3. She also relied upon the judgment of the Apex Court in the case of Manager M/s. Pyarchand Kesharimal Porwal Bidi Factory Vs. Onkar Laxman Thenge and others reported in **1970 (20) FLR 140** and the judgment of the Apex Court in the case of K.I. Shephard and others Vs. Union of India and Others reported in **1987 SCC (L & S) 438.** She invited my attention to number of other documents which were filed before the reference Court which indicated that the persons who were working in the Fire Brigade Department who were specially trained by International Civil Aviation Organization (ICAO) were shifted to other Departments. She submitted that persons who were replaced from MIAL were not approved by the said ICAO, looking after the safety standard being maintained by the Airports all over the world.

12. I have heard both the parties at length.

13. It is an admitted position that the provisions of Section 12-A of the AAI Act were challenged before the two High Courts viz. Delhi High Court and Kerala High Court and both the Courts had upheld the validity of the said provision. The Legislature, therefore, had by inserting the said provision, principally accepted the policy of permitting privatization of Airports for the purpose of improvement of services on these Airports. The grievance of the employees essentially is that without taking the Union into confidence, the AAI had entered into an agreement with MIAL and had given operation of the Airport to the said Private Company for a period of 30 years. It is their case, therefore, that the said statutory requirement of issuance of notice under section 9A had not been complied with and, therefore, the Industrial Tribunal was justified in passing the interim order during the pendency of the reference. On the other hand, a fear is expressed by MIAL which would operate the Airport from 3/5/2009 that if AAI is not permitted to transfer its employees, there would be chaos at the Airport and it would not be possible for two sets of employees to work on the same post. It is no doubt true that an affidavit has been filed

by AAI in which they have stated that the condition of service of its employees would not be changed as a result of OMDA agreement and that they would continue to be its employees and that they would not be retrenched. It was contended that if AAI is restrained from transferring these employees, it would not be possible for MIAL to carry out day-to-day operations on the Airport.

14. In my view, at this stage, it will not be necessary and possible to consider the various submissions made by the Counsel appearing on behalf of the Union and the learned Senior Counsel appearing on behalf of the petitioners as to whether notice under section 9A ought to have been given or not since this issue will have to be decided at the final hearing of the reference, after evidence is adduced by both the parties for the purpose of coming to the conclusion whether the conditions of service of employees of AAI will be affected or not or whether the matter would fall under Item Nos. 10 and 11 of Schedule 4 of the I.D. Act. Both the parties have relied on various documents and, as such, at interim stage, it is not necessary to go into the merits of the said

submissions. At this stage, the only question which needs to be taken into consideration is, whether this Court should interfere with the interim order passed by the Industrial Tribunal.

15. The Industrial Tribunal has passed the following operative order:-

> "O R D E R
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> a) Prayer prayed in these Applications is partly allowed;
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> b) Prayer of the Applicant-Unions to prevent "MIAL" in making adverse alterations in service conditions without following due process of law and preventing Airport Authority of India in transferring the employees from Bombay Airport to other Airports, and direct "AAI" to provide work to the existing employees is hereby allowed;"

16. The said order, essentially, is in two parts. In the first

part, the MIAL is prevented from making adverse alterations in the service conditions without following due process of law. So far as the first part of the operative part of the order passed by the Industrial Tribunal is concerned, in my view, the Industrial Tribunal has misconstrued the provisions of the OMDA agreement. Perusal of clause 6.1.4 clearly discloses that there is no compulsion on the employees of AAI to join MIAL and if they do not exercise the said option, they would continue to be the employees of AAI. The learned Industrial Tribunal, therefore, had clearly misconstrued the said provisions by coming to the conclusion, prima facie, that MIAL had any authority to alter the service conditions of the employees of AAI who had not opted to joint MIAL. In my view, therefore, the said observation has been made without application of mind and the said observation, therefore, needs to be set aside.

17. So far as the second part of the operative part of the order of the Industrial Tribunal is concerned, AAI has been prevented from transferring its employees to other Airports. The grievance of the Union is that if en-mass transfers are

made, it would be contrary to the existing conditions of service which have not been crystalized on account of non-formulation of guidelines. It is strenuously urged that there was no need to transfer the employees during the pendency of the reference since reference itself could be disposed of expeditiously. Mr. C.U. Singh, the learned Senior Counsel, strenuously urged that from 03/05/2009 AAI would seize to receive operational support which they received for the past three years and on an average @ Rs 8 crores per month. He also invited my attention to the affidavit which he had tendered today in which it is stated that separate action was being undertaken for merger of seniority of employees of both Divisions and that it would be applicable to Delhi and Mumbai Airports employees which were posted at other Airports as per the redevelopment plan. It is also stated in the said affidavit that a separate scheme was being worked out in the interest of the employees of AAI and the criteria which is to be followed in redevelopment/transfer was also mentioned. It is also stated that voluntary retirement scheme which was offered to employees of AAI was much better than the voluntary retirement scheme which was

offered by any other public sector organization.

18. So far as the first submission made by the learned Senior Counsel appearing on behalf of AAI is concerned regarding the jurisdiction of the Industrial Tribunal to grant interim relief, in support of the said submission he relied upon the judgment of Division Bench of this Court in the case of MRF Ltd., Goa Vs. Goa MRM Employees' Union and another, reported in **2004 I LLJ 394**. It is submitted that the Tribunal, therefore, erred in granting injunction, restraining AAI from transferring its employees. On the other hand, the learned Counsel appearing on behalf of respondent Nos. 1 and 2 relied on the judgment of this Court in Writ Petition No.7534 of 2006 (Oil and Natural Gas Corporation vs Transport & Dock Workers Union & Ors) dated 7/3/2007, in which placing the reliance on the judgment of the Apex Court in the case of the Management Hotel Imperial, New Delhi and others vs. Hotel Workers' Union, reported in AIR 1989 SC 1342, the learned Single Judge observed that decision of the Division Bench in MRF Ltd.'s case (supra) was in relation to a complaint under section 33A of the Industrial

Disputes Act. In my view, submissions made by the learned Senior Counsel appearing on behalf of AAI cannot be accepted. The Apex Court in the case of the Management Hotel Imperial, New Delhi andothers vs Hotel Workers' Union, reported in AIR 1959 SC 1342 has held that “thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.” In the present case, the case of the Union is that, as a result of OMDA agreement and more particularly clause 6.1.4, those workers who had not opted to join with MIAL are bound to be transferred and, therefore, the question of transfer is incidental to the main question which is referred to the Tribunal and, thus, though the question whether the AAI has right to transfer en-mass all its employees is not referred to, it is incidental to the main question which is referred. That being the position, in my view, the Tribunal did have jurisdiction to consider the question of interim relief. Apart from that, it is an admitted position that the judgment in MRF Ltd.'s case (supra) has been carried to the Apex Court and the Apex Court has referred the issue to the larger

Bench.

19. So far as the second submission of the learned Senior Counsel appearing on behalf of the Petitioner about the applicability of section 9A to the present case is concerned, it is no doubt true that an undertaking has been given by the AAI that **(a)** these employees will not be retrenched, **(b)** their service conditions will not be changed, and **(c)** employees who have not opted to join MIAL will continue to be the employees of AAI. However, on the other hand, the OMDA agreement stipulates that those employees who do not opt to join MIAL will be transferred en-mass to other Airports. The right of AAI, therefore, to transfer all employees en-mass being the only consequence of its employees not opting to join MIAL, therefore, is an issue which will have to be decided in the reference. Reliance has been placed on several judgments of the Apex Court and this Court by the learned Senior Counsel Mr. C.U. Singh appearing on behalf of AAI wherein it has been held that if conditions of service are not affected and the employee is not likely to be retrenched, provisions of section 9A will not

be attracted. It is also submitted that the case of AAI would fall under the proviso to section 9A which clearly stipulates that in the event of there being Regulations or Rules, provisions of section 9A would not be attracted. He has invited my attention to section 7 of the Regulations which stipulates that employees can be transferred to any Airport by the AAI. On the other hand, Ms. Gayatri Singh, the learned Counsel appearing on behalf of respondent Nos. 1 and 2 has submitted that there is some controversy regarding applicability of the said Regulation. She has submitted that, initially, when the Domestic and International Divisions were separate, the employees of Domestic Division who were working in Metropolitan Cities could not be transferred elsewhere. After the merger of two Divisions, no criteria has been laid down for the transfer of employees. Mr. Grover, the learned Counsel appearing on behalf of respondent No.3 also invited my attention to the judgment of the Apex Court in the case of Lokmat Newspaper Pvt. Ltd. V/s. Shankarprasad reported in **1999 II CLR 433** wherein it has been held that in the event of modernization as contemplated under Item 10, notice has to

be issued prior to modernization and not afterwards. In my view, all these issues as to whether section 9A is applicable to the dispute between the parties or not will have to be decided in the reference. The fact remains that as a result of the OMDA agreement, the fate of those employees who do not opt to join MIAL would be that they would be transferred to other Airports. If the reference succeeds, decisions which are taken pursuant to OMDA agreement will not survive. Therefore, reference court has rightly taken into consideration whether prima facie case is made out by the employees and whether the balance of convenience is in favour of the employees. In my view, for a period of three years, the AAI has given operational support to MIAL, which has worked out quite smoothly and, therefore, apprehension of AAI and MIAL that there would be chaos at the Airport if these employees are not transferred by 03/05/2009, in my view, is unfounded and since the arrangement is going to continue for a period of three months, no prejudice would be caused to AAI save and except the financial burden which will have to be borne for a period of three months. On the contrary, however, if the order is stayed, the employees will

have to go en-mass to different Airports and will have to look for residential quarters and other related problems. The balance of convenience, therefore, under these circumstances, is in favour of the employees. Further, 600 employees have been transferred by AAI, 799 employees of MIAL have been appointed and, therefore, if the balance employees from AAI i.e 2112 minus 600 continue to remain at the Airport, there is no occasion for chaos at the Airport.

20. In my view, at this stage, it is not necessary to interfere with the order passed by the Industrial Tribunal in respect of not transferring the employees, if suitable directions are given to the Industrial Tribunal to expeditiously dispose of the reference within a period of three months from today. I am informed by the Counsel appearing on behalf of the respondents that, in the past, similar reference has been disposed of within a period of two months. Without expressing any opinion on the merits of the case and about the rival contentions, in my view, in the interest of justice, it would be appropriate if the employees of AAI are permitted to continue to work at the Mumbai Airport and no prejudice

would be caused to AAI for a period of three months if they are so allowed to continue to work. It will have to be clarified, however, that those employees who have already given their option to be transferred to the three destinations which were given by AAI will not be permitted to withdraw the said option which has been exercised, though the said transfer of these 600 employees would be without prejudice to their rights and the said transfer would be subject o result of the reference. It is an admitted position that in the past three years employees of AAI have worked with MIAL employees under their supervision and alongwith their workmen. The MIAL, so far, has employed only about 799 employees which includes 161 employees who have opted from AAI to join MIAL. Therefore, it would not be a case where excess number of employees would be deployed at the Airport. There is much substance in the submission made by the learned Counsel appearing on behalf of the Union that prima facie it does appear that staff from the Fire Brigade Department has been deputed to some other Departments. The process of transferring management of AAI to MIAL though was to be done within a period of 3

years, it is an admitted position that before execution of OMDA agreement, consent of the Union was not obtained. As such all these questions will have to be gone into by the Industrial Tribunal which is seized of the reference. In my view, fear which is expressed by the learned Counsel appearing on behalf of AAI and also by the Counsel appearing on behalf of MIAL that there would be chaos at the Airport if these persons are not transferred, is unfounded. In fact, it would be in the interest of AAI, MIAL and the employees of the Union if these employees are permitted to work there during the pendency of the reference so that things can be worked out in the meantime. It is no doubt true that application for interim relief has been filed by the Union in October, 2008. However, the fact remains that the application has been made requesting the Government to refer the matter in 2007 itself. In any case, since reference itself is directed to be disposed of within a period of three months, no prejudice would be caused to AAI or MIAL during this period and, in any case, summer season would be over within that period.

21. In the result, both the Writ Petitions are partly allowed. The first part of the order passed by the Industrial Court is set aside. The second part of the order, however, is confirmed subjection to the following conditions:-

1. The Reference Court shall decide the reference on or before 31/7/2009, if necessary by hearing the case on day-to-day basis. Both the parties shall cooperate with the Industrial Tribunal. Till that time, employees who have not given any option of transfer should be permitted to work in the same place. AAI also shall continue to give them such work which is available in their grade. Employees shall not insist that they should be given only the same work which was given to them before their transfer.
2. The employees who have already given option shall not be given permission to

withdraw their option and shall abide by order of transfer which has been passed. It is clarified that the said order of transfer shall be subject to the result of the reference. All contentions raised by both the parties are kept open and shall be considered by the Tribunal on merits and in accordance with law.

22. Both the Writ Petitions are accordingly disposed of.

(V.M. KANADE, J.)